

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
KEITH DUNSTON	:	NO. 11-418

MEMORANDUM

Bartle, J.

October 25, 2011

Before the court is the appeal of defendant Keith Dunston from an Order of Magistrate Judge David R. Strawbridge granting the motion of the government for pretrial detention. Dunston has also filed a motion for pretrial release. We review de novo an Order from a magistrate judge granting a criminal defendant pretrial detention. See 18 U.S.C. § 3145(a); United States v. Delker, 757 F.2d 1390, 1395 (3d Cir. 1985).

A federal grand jury issued a seven-count indictment on July 28, 2011 charging Dunston with: (1) two counts of distribution of cocaine base or "crack" in violation of 21 U.S.C. § 841(a)(1); (2) three counts of unlawful use of a communication facility in furtherance of a drug crime in violation of 21 U.S.C. § 843(b); and (3) two counts of distribution of a controlled substance within 1,000 feet of a protected location, namely a school, in violation of 21 U.S.C. § 860(a).

Dunston appeared before a magistrate judge on September 30, 2011 for an arraignment and a hearing on the motion of the United States for pretrial detention. At the conclusion

of the hearing, the magistrate judge granted the motion and detained Dunston pending further proceedings. We held an evidentiary hearing on October 20, 2011.

The Bail Reform Act governs the issue of pretrial detention. See 18 U.S.C. § 3142. A person is either to be (1) released on personal recognizance or upon execution of an unsecured bond; (2) released on conditions; (3) temporarily detained to permit revocation of conditional release, deportation or exclusion; or (4) detained. Id. at § 3142(a). Dunston is charged with the commission of several narcotics offenses which carry a maximum term of imprisonment of more than ten years. Accordingly, a rebuttable presumption arises that "no condition or combination of conditions will reasonably assure the appearance of the [defendant] ... as required and the safety of ... the community ...." 18 U.S.C. § 3142(e)(3)(A).

In deciding whether there are any conditions of release that will achieve these goals, the Bail Reform Act requires us to consider the following factors:

- (1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including --
  - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to

drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release ....

Id. at § 3142(g).

Dunston is charged with very serious crimes involving the distribution of narcotics. If convicted, he faces a possible maximum prison term of approximately 132 years. The government has strong evidence of Dunston's involvement in these crimes, including approximately 28 audio recordings that implicate him. The government is also prepared to offer surveillance tapes showing Dunston engaged in this illicit activity and various narcotics paraphernalia seized from his house.

Dunston has one previous conviction for third degree murder in 1991. Although this conviction occurred over twenty years ago, it too is a very serious crime. Moreover, some of the activity for which Dunston is charged in the current indictment took place while he was still under state parole supervision for his murder conviction. At the time of his arrest, Dunston tested positive for marijuana use.

Dunston maintains that he has lived in the Philadelphia community his entire life. He owns a house in which he resides

with his two sons and is prepared to offer the equity in his house to secure his appearance at future court proceedings. He has worked several jobs, including as a barber, a refrigerator installer, and as a car salesman.

Considering all of these facts, Dunston has not rebutted the presumption that no set of conditions for pretrial release will assure the safety of the community. The information offered by Dunston in support of his motion for bail does not outweigh the serious nature of the crimes charged, the weight of the evidence against him, and the violent nature of his previous conviction. We find no error in the pretrial detention of Dunston ordered by the magistrate judge and will affirm his Order of September 30, 2011. Thus, we will also deny the motion of the defendant for pretrial release.